

GEORGE C. OTT

IBLA 77-63

Decided May 16, 1977

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying the petition for reinstatement of noncompetitive oil and gas lease N-5917.

Set aside and remanded.

1. Oil and Gas Leases: Reinstatement

A lessee whose oil and gas lease terminated by operation of law for failure to pay rental timely may be found to have exercised "reasonable diligence" in mailing the rental payment of October 29 when it was due on November 1, and the lease should therefore be considered for reinstatement.

APPEARANCES: Mr. George C. Ott, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Mr. George C. Ott appeals from the November 15, 1976, decision of the Nevada State Office, Bureau of Land Management, denying his petition for reinstatement of oil and gas lease N-5917. 1/ The lease had terminated by operation of law when appellant's rental failed to arrive at the State Office on or before the anniversary date of the lease, November 1, 1976. The State Office denied appellant's petition because he failed to exercise reasonable diligence in submitting the rental.

Appellant mailed his rental in Waukesha, Wisconsin, on October 29, 1976, a Friday. The State Office, in Reno, Nevada, received the rental on November 2, 1976, a Tuesday. Appellant argues that he mailed the rental 4 days before the due date which

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1/ The appeal was also signed by Mrs. Ott but her interest is not indicated in the other documents in the file.

should have been sufficient to reach the State Office by November 1. On appeal he also mentions an illness and certain other difficulties.

[1] An oil and gas lease terminated by operation of law under 30 U.S.C. § 188(b) (1970) for failure to pay rental on or before the anniversary date may be reinstated only if, among other things, the failure to pay timely was either "justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1970). "Reasonable diligence" as explained in the regulations normally requires "sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). This Board has held that mailing a payment from Oklahoma City, Oklahoma, to Silver Spring, Maryland, on October 29 which was due on November 1 constituted reasonable diligence. Eason Oil Company, 16 IBLA 109 (1974). The time frame in that case and the present case is certainly close in failing to account for possible mail delays. However, we are reluctant to rule that appellant should not have expected the mail to be delivered in 3 days. We therefore find that the appellant exercised "reasonable diligence" in submitting his rental payment and that his lease should be considered for reinstatement. However, we caution appellant that since he is now on notice of possible postal delays, in the future he should allow more time for such delays, or his conduct may not be deemed reasonable diligence.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this opinion.

Joan B. Thompson  
Administrative Judge

We concur:

Joseph W. Goss  
Administrative Judge

Frederick Fishman  
Administrative Judge

